

GUIDE TO CHANGES FOR COURTS AND PRACTITIONERS
to BAP Local Rules of Practice
Effective May 1, 2010

I. New or Changed Court Responsibilities:

- A. L.R. 8003-1, *Motion for Leave to Appeal - Transmittal of Motion and Notice of Appeal*, requires the bankruptcy court to notify the BAP immediately after a motion for leave to appeal and notice of appeal are filed.
- B. L.R. 8007-2, *Transmission of the Record - Appeal*, requires the bankruptcy court to notify the BAP immediately after the filing of: 1) a notice of appeal; 2) any motion regarding the appealed judgment or order and any order disposing of the motion; and 3) any statement of election to have the appeal heard in the district court.
- C. L.R. 8016-4, *Bankruptcy Appellate Panel Clerk Authorized to Act on Certain Matters*, permits the BAP Clerk to deny a noncompliant election to have an appeal heard by the district court and any motions that do not comply with the Federal Rules of Bankruptcy Procedure or these Local Rules.
- D. L.R. 8018-3, *Discipline*, has been changed to require any disciplinary action against attorneys and parties to be taken by a three judge panel rather than by a single judge.

II. New or Changed Practitioner Responsibilities:

- A. L.R. 8008-1, *Filing and Service*, implements mandatory electronic filing through CM/ECF with two exceptions:
 - 1. Documents filed under seal in the bankruptcy court should be filed in paper with the BAP; see L.R. 8009-3(k).
 - 2. Persons exempt from mandatory ECF, who may file by conventional means (regular mail, e-mail, or fax); see L.R. 8008-1(c). Local Rule 8008-1(g) requires that all papers filed by conventional means must contain an original signature (for persons subject to mandatory ECF, the use of the e-filer's login and password constitutes the signature). Documents filed in paper, however, must be filed as an original with three accompanying copies. Fed. R. Bankr. P. 8008(a).

Note: the Rules do not define who is exempt from mandatory ECF, but rather contemplate that details regarding ECF and system requirements will be provided in ECF Procedures and Guidance which will be posted on the BAP website.

- B. L.R. 8001-1, *Notice of Appeal - Separate Notices Required*, clarifies that multiple orders may not be appealed using a single notice of appeal, and that each notice of appeal requires the prescribed fee to be paid.
- C. L.R. 8001-5, *Payment of Fees to Bankruptcy Court*, directs that fees must be paid to the bankruptcy court.
- D. L.R. 8001-6, *Proceedings In Forma Pauperis, Fee Waiver*, requires any motion to waive fees to be filed with the bankruptcy court.
- E. L.R. 8001-4, *Entry of Appearance, Statement of Interested Parties, and Statement Regarding Oral Argument, One Document*, requires counsel or a pro se party to file three items, which may be combined into one document, within 14 days after the notice that the appeal has been docketed: an Entry of Appearance, a Statement of Interested Parties, and a Statement Regarding Oral Argument.

Note: the new BAP Rules no longer require the filing of the designation of record or statement of issues with the BAP; however, the BAP may still issue a notice of deficiency for failure to file those documents with the bankruptcy court.

- F. L.R. 8008-5, *Privacy Protection*, informs litigants that privacy protections in cases on appeal are governed by Federal Rule of Bankruptcy Procedure 9037 and Federal Rule of Civil Procedure 5.2, and further that the BAP clerk will not redact personally identifiable information that the filer neglects to redact.
- G. L.R. 8011-1, *Motions*, requires a statement of opposition to be included in all motions except:
 - 1. A motion for stay, which the BAP assumes is opposed (L.R. 8005-1).
 - 2. A procedural motion, such as a motion under Fed. R. Bank. P. 9006.
- H. Prior L.R. 8009-1, *Briefs and Appendix*, is renamed and renumbered as L.R. 8009-1, 8009-2, and 8009-3. L.R. 8009-3, *Form of Appendix - Appeal*, changed as follows:
 - 1. Clarifies that the appendix filed with the brief containing relevant excerpts from the bankruptcy court record constitutes the record on appeal.
 - 2. Further describes the required table of contents and pagination for the appendix.

3. Details the procedures for sealed documents.
 4. Requires the appendix to contain all exhibits filed in the bankruptcy court needed for the BAP to review.
 5. Reminds parties that only documents properly before the bankruptcy court may be included in the appendix and considered by the BAP.
 6. Directs that if multiple parties file separate briefs, they may file separate appendices; however, parties should not duplicate items included in a previously filed appendix and may adopt the items by reference.
- I. L.R. 8010-1, ***Form of Briefs***, deletes the requirement to state in the brief the reasons for oral argument.
 - J. L.R. 8012-1, ***Oral Argument - Appeal***, now requires litigants to give the BAP as much notice as possible when requesting to change the date, method, or place of oral argument. The rule also requires a party to file a statement indicating who will appear at oral argument, and failure to do so will result in participation at oral argument requiring leave of court.
 - K. L.R. 8014-1, ***Costs - Appeal***, has been added to inform litigants that any bill of costs must be filed with the bankruptcy court.
 - L. L.R. 8015-1, ***Motion for Rehearing - Appeal***, has been changed to be more consistent with Fed. R. App. P. 40 by requiring the motion to state with particularity any points overlooked or misapprehended by the court and to argue in support of the motion.
 - M. L.R. 8018-4, ***Diligent Prosecution of Appeals***, has been updated to reflect mandatory ECF, and also adds a new subsection (b) which informs litigants that failure to comply with these Local Rules may delay consideration or lead to denial of a motion.

III. Section Numbering or Stylistic Changes:

- A. New L.R. 8001-3, ***Election for District Court Determination of Appeal***, was previously designated L.R. 8001-1.
- B. L.R. 8006-1, ***Record and Issues on Appeal***, has been retitled *Designation of Record - Appeal* and changed by deleting paragraph (b), which required a party who filed a designation of record or statement of issues with the bankruptcy court to file the same with this court.

- C. L.R. 8016-6, ***Mandate***, has been changed to relocate the content of subsection (a), which defines mandate, to subsection (d) and relettered accordingly.
- D. L.R. 8018-2, ***Entry of Appearance and Admission to Practice***, has been retitled *Admission to Practice*, and the content of subsections (a)&(b) regarding an entry of appearance has been relocated to new L.R. 8001-4(a).
- E. Prior L.R. 8018-3, ***Statement of Interested Parties***, has been deleted and the content thereof has been relocated to new L.R. 8001-4(b).
- F. L.R. 8018-6, ***Citation of this Court's Unpublished Decisions***, has been changed in light of revised 10th Cir. L.R. 32.1 to be more consistent therewith.
- G. L.R. 8018-9, ***Supplemental Authority***, has been retitled *Submission of Supplemental Authority*, and subsections (a)&(b) have been collapsed into one paragraph.
- H. Prior L.R. 8018-11, ***Applicable Rules***, has been designated as L.R. 8018-1 and retitled *Local Rules of Circuit Judicial Council or District Court*.
- I. Prior L.R. 8018-12, ***Citation and Effective Date of These Rules***, has been redesignated as L.R. 8018-11.